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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,019	11/30/2001	Andrew Joseph Keogh	063511/9043	4717
23409	7590	11/17/2003		
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			EXAMINER TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/889,019

Applicant(s)

KEOGH, ANDREW JOSEPH

Examiner

Lien T Tran

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-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-38 and 40-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-38 and 40-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

The 102 rejection of claims 23,24,28, 31-34,36-38,42 and 45-47 over the Keller reference is hereby withdrawn.

The 103 rejection of claims 25-27 and 40-41 over the Keller and Bisson et al references is hereby withdrawn.

The 103 rejection of claims 30 and 44 over the Keller and Forkner references is hereby withdrawn.

The 112 second paragraph rejection of claims 23 and 34-36 is hereby withdrawn.

Claims 23-25, 27, 28, 31,33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Bisson et al.

Bisson et al disclose a process of making puffed product. The process comprises the steps of forming mixture of materials and passing the mixture through an extruder having temperature in the range of 30-70 degree C and under pressure. The paste-like material issuing from the extruder is passed into an enclosure where a subatmospheric pressure prevails. The enclosure has a pressure of from 2-71kPa(20000-71000 Pa). The paste-like material expands in the enclosure by evaporation of the water. The strand issuing from the extruder nozzle may be cut up into rodlets, pellets or chip. Alternative, the extruded strand may be discharged into a space where atmospheric pressure prevails. The temperature in the extruder imparts to the materials the plasticity required for passing smoothly through the bores in the nozzle. The product obtained can be seasoned, sweetened, flavoured or coloured. The puffed product may be impregnated with a fat, syrup, liquor or an alcohol. The mixture used to form the food product contains water. (see col. 2-3)

Bisson discloses a process as claimed. The foodstuff passing through the extruder is in a plastic state; thus, it is inherently capable of further expansion or contraction. The foodstuff is in expanded state because it is passed through the extruder. The specification discloses initial expansion takes place by extrusion through a die. Bisson discloses the extruded strand may be discharged into atmospheric pressure; thus, this meets the claimed limitation of the first pressure being atmospheric pressure and the second pressure is lowered than the first pressure because the puffing takes place in vacuo.

Claims 26,29,30,32,35,36-38 and 40-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al in view of Forkner.

The teaching of Bisson et al is described above. Bisson et al do not disclose using a belt conveyor, add a chemical expanding agent, the foodstuff is a confectionery, forming the composition into balls and the second temperature being lower than the first temperature.

Forkner discloses expanded confections. He teaches to add chemical expanding agent to aid in the expansion. (See col. 6 lines 45-50)

It would have been obvious to add a chemical expanding agent as taught by Forkner in the composition of Bisson to aid in the expansion of the food product. It would also have been obvious to use a belt conveyor to transport the composition to the enclosure where expansion takes place. The use of the conveyor belt enhances the speed of the process. It would also have been obvious to make a confectionery product because Bisson et al disclose various compositions can be made and materials such as

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syrup, sweetening agent can be added. The addition of sugar will make the product to be a confectionery product. It would also have been obvious to make the second temperature to be lower than the first temperature because the composition has already been plasticized in the extruder; thus, the composition does not need to be heated. It is obvious the product is cooled after it exists the extruder. It would have been obvious to make the temperature around ambient to quicken the cooling of the product.

Applicant's arguments with respect to claims 23-38 and 40-48 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Tuesday, Wednesday and Friday. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

November 14, 2003

L. Tran
Group 1761